

Applicant: Kerry Charles Broad
Application No.: 10/656,644

REMARKS

The Amendment amends claim 1 and adds claims 3-9. Claims 1-9 are currently pending.

Claims 1 and 2

The Action rejected claims 1 and 2 as anticipated by U.S. Patent No. 3,865,340 to Ellis. Ellis shows a support apparatus with a platform 1 that moves in three directions. The apparatus of Ellis is particularly suited for supporting "optical measurement and machine tools" in a "naval environment." Col. 2, lines 33-34 and Col. 3, line 24.

The Action argues that a claimed element must result in a structural difference between the claimed invention and the prior art. Specifically, it appears that the Action's position is that a handrail mechanism is not an element in the claims. "[A]pplicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.... Applicant should note that a handrail or steps are not recited in the body of the claim." Action at pages 3-4. The below remarks respond to these statements, and also the remaining Ellis-based rejections.

The Action's position that the handrail mechanism is not an element of the claims. The claims are directed to a collapsible handrail mechanism, and as

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such, a “collapsible handrail mechanism” must be an element of prior art cited as anticipating the claims. A handrail mechanism is cited in two instances in the claims: first, in the preamble, and later as a specific element in the claims. With respect to the preamble, if a preamble is “necessary to give life, meaning, and vitality” to the claim, then it should be construed as a claim limitation. See, e.g., *Kropa v. Robie*, 187 F.2d 150, 152 (CCPA 1951). In the current claim, the claim elements, without the preamble, recite a parts’ list without meaning or vitality—stanchions, latching mechanisms and the like with no “life.” Thus the claim’s preamble is vital to the claims and thus is a limitation thereof.

With respect to whether the handrail is an element in the claims outside the preamble, it is. Claims 1 and 2 recite “a handrail” as an element; Ellis shows no such handrail. Ellis also fails to show stairs. Ellis also fails to show the operation of the claimed handrail mechanism as claimed in claims 1 and 2.

Ellis contemplates a device for absorbing shocks to protect electrical devices aboard a naval vessel; it has nothing to do with a handrail. Ellis does not mention steps. Ellis does not mention handrails. Ellis does not mention a collapsible handrail. It fails to teach any of these claimed elements.

Having established that the claims contain several elements not shown in Ellis, the focus now shifts to other differences between Ellis and the claims.

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Ellis does not show a stanchion, latching mechanism, stowed and operational positions, and the rotation of the stanchion in a single plane.

Ellis does not show or suggest the claimed "stanchion." A stanchion is a strut that supports a guardrail or handrail, and Ellis makes no mention of same.

Ellis also does not show or suggest the claimed "latching mechanism having a slide plate preventing substantial downwards movement of the stanchion, a top plate preventing substantial upwards movement of the stanchion, and a side plate preventing substantial sideways movement of the stanchion." The Action points to Ellis member 8 as anticipating this element, but it does not. Ellis member 8 is *not* a latching mechanism. It does not prevent downwards movement of anything, especially a stanchion. The Ellis members are *specifically made for rotation and movement in three directions- not prevention of same*, as claimed. Since preventing movement is the purpose of the claimed latching mechanism, Ellis does not anticipate it.

The Office Action does not point to any element or combination of elements that shows or suggest the claimed limitations of how the handrail moves between the stowed and won positions. The Action suggests that this is shown, and yet Ellis does not suggest two positions, stowed and operational, that the apparatus moves between.

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With respect to claim 2, Ellis member 3 rotates in two planes (Col. 2, lines 23-33), as opposed to the claimed stanchion that is "pivotally mounted for rotation in a single plane." Claim 2 thus claims that the stanchion pivots in one single plane, as opposed to Ellis's two planes.

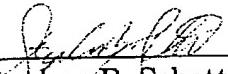
Claims 3-9

Claims 3-9 are at least patentable for the reasons stated above with respect to claims 1 and 2. For instance, the handrail is an element of claims 3-9. Claim 5 recites stairs as a claim element. Ellis shows no such stairs or handrail. Ellis also fails to show the operation of the claimed handrail mechanism.

For the above reasons, the application is believed to be in condition for allowance. If the Examiner believes that a telephone conference will advance the prosecution of this application, he is invited to contact the undersigned at his convenience.

Respectfully submitted,

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